Argued for the respondents—(1) The Sheriff was right. This was not an arbitration in the strict sense of the term, but a remit to a man of skill as an expert to assess the cost of the work done. Such a referee was not bound to hear parties, but was entitled to satisfy himself as he might think proper—*M'Gregor* v. *Stevenson*, May 20, 1847, 9 D. 1056; *Trowsdale* (*cit. sup.*) at p. 1338; *Logan* v. *Leadbetter*, December 6, 1887, 15 R. 115, 25 S.L.R. 110; *Paterson & Son, Limited* v. *Corporation of Glasgow*, July 29, 1901, 3 F. (H.L.) 34, 38 S.L.R. 855; *Stevenson* v. *Watson* (1879) L.R., 4 C.P.D. 148; *Alston & Orr* v. *Allan*, 1910 S.C. 304, 47 S.L.R. 203. The only alternative would be for the arbiter to allow a proof, and this the parties wished to avoid. To say that failure to furnish details and vouchers rendered the arbitration invalid was unsound where as here the reference was executorial and not judicial. (2) It was not averred that the arbiter had acted *ultra fines compromissi*. To entitle a party to raise that question the fact must be specifically averred on record.

At advising—

LORD PRESIDENT—In this case I think the pursuers have gone too fast; but I am bound to say that I do not think the case was argued upon the grounds upon which I feel bound to dispose of it. The argument directed to us was entirely directed to what the engineer ought to have done. . . . [*His Lordship gave narrative supra*]. . . . The part of the defence upon which we had most of the argument was that the pursuers' engineer did not personally make up a statement of the cost of the labour and materials referred to, but he relied on being furnished with accurate information placed before him by the pursuers as correct without any investigation. No detailed statement was ever submitted to the defender, and he never had an opportunity of being heard by the pursuers' engineer. Now it was with regard to that that the learned Sheriff quoted the case of *Trowsdale*, and I think the quotation was much in point. I do not think it is a good case of complaint that the pursuers' engineer did not personally make up a statement, but relied on collected information. One in the position of an arbiter, such as this engineer, is entitled to get at his facts as he pleases.

But while I say all this, I think the action is entirely premature, and that upon the ground that I do not think the pursuers here have made as yet a proper demand under the contract. What the defenders have got to pay is the cost of the labour incurred by them, and interest on the cost of the permanent way materials and of the drain and of the retaining wall shown on the said plan, at the rate of 4½ per centum per annum, as the amount of such cost and interest shall be determined by the engineer of the first party. Now undoubtedly that contract makes the engineer of the first party the final judge of the amount, but it does not seem to me to absolve the North British Railway Co. from doing what everybody else has to do when he tenders a bill, namely, from giving particulars, and I think therefore the bill as rendered is quite wrong. They have no right, I think, to put down an absolute slump sum of £187, 9s. 1d. They were bound to say what the labour was, so many men for so many hours, giving an indication so that the other parties are at least enabled from their point of view to check it. I quite concede and understand that if they did not agree to the bill as rendered they must go before the engineer, and the engineer upon that matter would be supreme, but as it is they have not got a chance of bringing before the engineer the possibility of mistakes even of the grossest sort. In the same way when you come to this sum of £1107, 15s. 1d., it is absolutely slumped without any distinction between how much of it is due to the red works and how much is due to the green, and there again no materials are given. I think therefore the North British Railway Co. were not in a position to raise an action when they raised this action, and what I propose should be done is that the interlocutor should be recalled and the action dismissed. Of course there cannot be absolvitor, because the money is still due, and the North British Railway Co. can render a proper bill to the defenders, and if they do not pay and dispute the matters the parties must go before the engineer.

LORD JOHNSTON—I agree

LORD SKERRINGTON—I concur.

LORD MACKENZIE did not hear the case.

LORD KINNEAR was absent.

The Court sustained the appeal, recalled the interlocutors of the Sheriff and Sheriff-Substitute dated respectively 15th July 1910 and 24th March 1910, and dismissed the action.

Counsel for Pursuers (Respondents)—Constable, K.C.—A. O. Inglis. Agent—James Watson, S.S.C.

Counsel for Defender (Appellant)—Sandeman, K.C.—Fenton. Agents—Simpson & Marwick, W.S.

Friday, March 17.

FIRST DIVISION.

[Lord Johnston, Ordinary.

LEITH AND EAST COAST STEAM SHIPPING COMPANY, LIMITED, IN LIQUIDATION.

Company — Winding-up — Liquidation — Accounts of Law Agent in Liquidation —Observations as to the Respective Duties of Liquidators and their Agents.

Where a liquidator applies to the Court for approval of his accounts, his law agent's whole business accounts in connection with the liquidation must

be judicially audited, and the judicial audit is not limited to judicial work. The law agent ought not to split up his accounts according to the different steps in the liquidation process, but he should present two accounts—(*a*) a continuous account for proper Court business in the liquidation process, and (*b*) a continuous account for general law agency work in the liquidation—it being for the reporter on the liquidator's accounts to say whether the general agency work was legitimately done by the agent, and was not work which should have been done by the liquidator. It is his (the liquidator's) duty to perform the business of the liquidation himself, and only to employ the law agent in such matters as bring him into contact with the Court, in such matters as involve conveyancing, and in such other matters as justify him in obtaining legal advice for his guidance.

On 8th January 1907 the Leith and East Coast Steam Shipping Company, Limited, and Thomas Dingwall, C.A., Edinburgh, the liquidator thereof, presented a petition to the First Division craving their Lordships to place the winding-up of the company under the supervision of the Court. On 24th January 1907 the Court granted the petition and remitted the cause to Lord Johnston as Lord Ordinary. The liquidator having thereafter presented a note for approval of his accounts, the Lord Ordinary (JOHNSTON) on 19th June 1908 made a remit to Mr Robertson Durham, C.A., Edinburgh, to report thereon, and thereafter, on 8th January 1909, of new remitted to Mr Robertson Durham, "with reference to the subjoined note, to examine the accounts of the law agent in the liquidation, and to obtain such further information and explanation as he may think proper, and to report."

Note.—"In this liquidation the reporter, to whom I remitted the liquidator's accounts for examination, and that he might aid me in fixing the liquidator's fee, has drawn my attention in a note appended to his report to the amount of the law agent's accounts. The reporter says that he 'considers the expenses incurred to the solicitor in this small liquidation, as taxed by the Auditor of Court, to be excessive,' and on examination of the proceedings in the liquidation I am disposed to say that they are certainly disproportionate to results. The reporter rightly asked for explanations, which led to a production of correspondence which shows that the liquidator had been very much of the same mind, and had so thoroughly done his duty as far as within his power that his demand for a reduction of the charges had met with a large measure of success. As originally tabled to the liquidator, the law charges amounted to £323, 17s. 11d. They were on his remonstrance reduced to £213, 4s. 11d., and have been taxed at £206, 14s. 6d.

"The reporter could not, in the exercise of his proper functions, do more than draw my attention to the matter of these accounts. But he acted rightly in doing so, and proceeding on the information which he gave me I have myself examined the accounts and had an interview with the Auditor, with the result that I am not prepared to pass the agent's charges as proper charges, in a question with the creditors, without further inquiry. When I say that the whole capital of the company subscribed was £2641, and that the dividend to ordinary creditors at 5s. in the £1 amounts only to £423, the fact that the law agent's business accounts even as taxed amount to £206, and are thus nearly double the fee of £105 which the reporter recommends for the liquidator, and which the liquidator accepts without demur, the mere statement shows, I think, that explanation is necessary. It does not seem in accordance with the fitness of things that the man who has none of the responsibility, and who is only called in for assistance when required, should be remunerated on a scale double that on which the man who has all the responsibility and the sole charge of a recognised piece of work is dealt with.

"I have for a long time been satisfied that the interest of creditors which, if there is any virtue in the supervision of liquidations by the Court, is the point to be safeguarded, required consideration of the mode, in its bearing on legal expenses, in which liquidations are often conducted. The present case is only one of many in which the same question has pressed itself upon me, and the notice which the reporter has taken of it has led me to select it for the necessary inquiry.

"A perusal of the accounts has confirmed the impression which I already had that the relative positions of the liquidator and his agent are in some quarters neither understood nor appreciated, and that agents sometimes act much more as if they were in charge of the liquidation, employing an accountant in the person of the liquidator to assist them, than themselves employed, as occasion requires, by their client the liquidator, and that there are liquidators who too readily accept this situation. I am glad to be able to say that the present liquidator Mr Dingwall has not so acted. Now a liquidator is almost invariably an accountant, not merely versed in figures but experienced in the business of dealing with realisations and with claims, and with all the negotiations connected with these two sides of the liquidator's functions. It is by reason of his qualification and for these very purposes that he is appointed. It is his duty to perform the business of the liquidation himself, and only to employ the law agent in such matters as bring him into contact with the Court, in such matters as involve conveyancing, and in such other matters as justify him in obtaining legal advice for his guidance. The law agent properly comes on the scene only when his client, the liquidator, requires his assistance, and to that end instructs him. He is not entitled to do work on his own initiative, and in particular he is not entitled to make it appear that he is

doing work which it is the duty of the liquidator to do, and which the liquidator is in fact doing. I have too frequently seen signs in accounts that some agents are imbued with the idea that their appointment as agent in the liquidation gives them an independent standing, and makes them the colleague of the liquidator. In the present case I have every reason to think that the agent, who has evidently not had much experience in liquidations, has erred through ignorance in paying to the details of the liquidation an attention which was not called for from him. That, however, does not absolve me from my duty of supervision. The fact of his accounts having originally been stated at the excessive figure of £323, and that I find, on perusing his accounts as rewritten, a general indication—I do not say more—that, to put it briefly, the business has been made too much of, require me, I think, in the performance of the above duty, to examine more thoroughly into the conduct of this liquidation than I should otherwise have done. If the law agent concerned thinks himself aggrieved by being made an object lesson, he must attribute it to his own excess of zeal. But I trust that the result may prove some guide to others in the future.

"I think that the best course which I can take is to ask for further assistance from the very experienced reporter to whom I have already remitted. For his guidance I shall state the circumstances which have led to my further directions to him.

"The Leith and East Coast Steam Shipping Company, Limited, which was registered on 21st September 1905, only carried on business as shipowners till January 1907. In its inception it had much wider views, but its practical outcome was the acquisition and working of only one small coasting steamer, which cost £3600. The shares subscribed were only 2641 £1 ordinary shares. The company acquired the ss. 'Matje,' at the above-mentioned sum, from Mr Donald Davidson Gray, leaving £2400 of the price on mortgage on the ship. There were 181 shareholders, and my impression is that they consisted largely of the promoters and their friends. So far as appears on the papers, the parties concerned in the flotation were Mr Donald Davidson Gray himself; Messrs A. F. Henry & M'Gregor, who, it was prearranged, were to become the managing directors, shipping agents, and secretaries of the company for five years from incorporation; Messrs T. M. MacLaren & Company, shipbrokers, Glasgow, who were to value the vessel between Mr Gray and the proposed company; and Mr J. F. Reekie, the agent in the present liquidation, who acted as agent for the promoters, and trustee for the company to be formed. I understand that Mr Dingwall, C.A., the liquidator, has been from the beginning the auditor of the company, though he was neither a promoter nor a shareholder. In these circumstances it was most natural that Mr Dingwall should be selected by the shareholders as liquidator, and that Mr Reekie should become solicitor in the liquidation, as they were both of them familiar with the affairs of the company, and particularly with the involvments which brought it into liquidation.

"The liquidation was a simple one, and I think that I may summarise the business of the liquidator thus:—*1st.* The ss. 'Matje' had to be realised, and meantime kept in condition to admit of that being effected. She had depreciated, and she failed to realise anything beyond the mortgage. The liquidator therefore had a somewhat difficult negotiation with Mr Gray, who was not only the mortgagee but also a shareholder with calls to pay. The liquidator came to an arrangement with Mr Gray, which received the sanction of the Court, under which he took over the vessel at the amount of his mortgage, paid his calls, and got a ranking for arrears of interest. *2nd.* Calls in arrear had to be recovered, and a call in the liquidation had to be made and recovered. *3rd.* A substantial claim for insurance had to be recovered. *4th.* A comparatively small amount of book debts in Leith and in the North of Scotland had to be collected. *5th.* Claims had to be got in and adjudicated upon. *6th.* In particular, a claim by Messrs A. F. Henry & M'Gregor under their five years' agreement as managing directors had to be settled.

"So far as I can see, the only serious pieces of business which the liquidator had to perform were:—*1st.* The settling with Mr Gray, and *6th.* The compromising with Messrs A. F. Henry & M'Gregor.

"All else was very simple, and I refer to the very lucid report of the liquidator as at 30th June 1907, which shows that he had a thorough grasp of all the details of the business committed to him, and only at certain pretty definite points required assistance.

"It was a direction of the shareholders that the liquidation should be placed under supervision, and the history of the liquidation, so far as the Court is concerned, is as follows:—*1st.* The supervision order is dated 24th January 1907. *2nd.* A note, No. 11 of process, was presented for sanction of compromise with Mr Gray on 24th May 1907. *3rd.* A note, No. 12 of process, for an order for claims, was presented on 23rd May 1907. *4th.* A note, No. 13 of process, for approval of the liquidator's list of contributories, was presented on 28th May 1907. Why there should have been three separate notes for these three last-mentioned purposes does not appear except to make the apparent details of the liquidation process bulk as largely as possible, but Nos. 12 and 13 were granted on 30th May 1907, and No. 11, after a conference with the liquidator on the following day. *5th.* A note, No. 25 of process, for sanction of a compromise with Messrs Henry & M'Gregor, was presented and granted on 18th October 1907. *6th.* A note, No. 24 of process, to approve the liquidator's deliverances on claims and his proposed first dividend of 5s. in the £, which had been presented in July, was granted also on 18th

October 1907. And then the final stage was reached when 7*th*. A note, No. 35 of process, was lodged on 18th March 1908, craving the Court to remit the law agent's business accounts to the Auditor for taxation, to fix the liquidator's remuneration, to authorise a final dividend, to approve of the liquidator's accounts, and to dissolve the company and authorise the destruction of its books.

"On the prayer of this petition I have two points particularly to notice.

"1*st*. It craved a remit of the law agent's accounts for taxation, and authority to the liquidator to pay the taxed amount thereof. To the terms of this crave there is no reason to object had it been properly understood. It is the procedure which followed upon it that is objectionable.

"This note was presented in vacation, and the Lord Ordinary on the Bills was moved to remit the accounts for audit, and *a priori* without report, or giving any opportunity to the Lord Ordinary having supervision of the liquidation, to know anything about the accounts, or the result of the audit, to authorise the liquidator to pay the taxed amount. Such motion ought not to have been suggested, much less made by the agent (for I doubt whether in vacation counsel was employed) whose accounts were in question. But the result was that *per incuriam* this improper order was signed, and consequently the liquidator, who should have been guided by the agent, thought he had no option but to pay the taxed amount of the accounts. As the liquidator had the *pro forma* authority of the Court to pay these accounts, I cannot in any case surcharge him now. But I cannot hold that any such improper proceeding precludes my examining in the end of the day, and it compels me to criticise with no very friendly eye, the accounts so paid, and which are vouchers of the liquidator's intromissions.

"2*nd*. The agent proceeded on the footing that the judicial remit of his accounts covered only his accounts in the Court business of the liquidation. He had another very large account, No. 54 of process, for what he styled extrajudicial business. This he did not at once put before the Auditor under the remit, but on 26th May 1908 he induced the liquidator to make a private remit of it to the Auditor. This was improper, and in view of the Lord Ordinary's interlocutor of remit ought not to have been accepted by the Auditor. I have more than once had occasion to state, and to act upon the statement, that while liquidators under supervision have a very wide measure of independence, if they choose to exercise it, and cannot be required to bring in their accounts for the examination of the Court, yet if in the final stage of the liquidation they do come for approval of their accounts with a view to getting as near an equivalent of exoneration as the Court can give them, then their agents' business accounts must be judicially audited, and nothing but a judicial audit will be accepted. In the result the account, No. 54 of process, which is the important account in the present examination, has not been audited under the judicial remit, and whatever might be said of the others, the interlocutor of the Lord Ordinary on the Bills of 8th April 1908 was no authority for its payment.

"The law agents' accounts are seven in number—taking them in their chronological order and giving their amounts as taxed—

(1) No. 49 of process, *re* note for supervision order, 2nd to 25th January 1907	£14	18	0
(2) No. 47 of process, *re* action at instance of Menzies & Coy., Limited, against the Company in liquidation, January 10th–February 6th, 1907	10	4	0
(3) No. 46 of process, *re* 1. Approval of compromise with Mr Gray. 2. Order for claims. 3. Sanction of list of contributories, 16th May–31st May 1907	26	8	8
(4) No. 48 of process, *re* sanction of compromise with Henry & M'Gregor, 16th–19th October 1907	9	15	2
(5) No. 50 of process, *re* approval of deliverances and payment of *interim* dividend, 6th July to 9th September 1907	17	2	1
(6) No. 45 of process, *re* approval of liquidator's accounts and close of liquidation	41	4	6
	£119	12	5

"These accounts the Auditor had audited under the judicial remit. As he has done so, and they have, as I understand, been paid, though on a sanction obtained in the manner above alluded to, I do not propose now to interfere with them, whatever my personal view regarding them may be, except possibly in the direction of the following inquiry. At the same time I shall ask the reporter to examine them and to report to me for my information whether from this method of splitting up the accounts he finds any duplication of charges, and further, to explain the statement in his first report that No. 45 of process contains prospective charges, some of which will never be incurred, with details of the latter.

"But these accounts raise a question of very general bearing, viz., why are they split up in this fashion? To the great inconvenience of this the reporter makes very pertinent reference. The agent appears to have stated that 'the Auditor now makes a practice of splitting up accounts in regard to the different notes in order that his fees and the Treasury fees may be kept separate.' I cannot find that this is the case, and the reason is not intelligible as the fees in such audits are all Exchequer fees. But the practice of so splitting up accounts is very prevalent.

"I am of opinion, after a good deal of experience and after careful consideration, that it ought not to be followed in future, and shal so direct the Auditor. The law

agent should present two accounts—(*a*) a continuous account for proper Court business in the liquidation process, which is one process, and (*b*) a continuous account for general law agency work in the liquidation. If this be done, it will, as the reporter says, be much easier to check the agent's charges.

"In the first place, the system of separately charging every step in the liquidation process, as if it was a process in itself, tends to magnify these steps, and, as I think, is too frequently the case in relation to incidental steps in liquidations—for instance, in the matters of sanction of compromises, orders for claims, &c., to make mountains out of mole hills, with corresponding cost to the funds in the liquidation; whereas a continuous account for Court work in the liquidation avoids the possibility of duplication, admits more readily of checking the practice of treating these minor incidental steps as if they were separate processes, and gives a comprehensive view of the Court costs.

"In the second place, a continuous account of general law agency in the liquidation—separated from the Court work—gives the necessary opportunity of checking, whether the agent has been properly and necessarily employed in such work, and enables the liquidator to see whether he did employ the agent to perform the work for which he charges, and the reporter to judge whether he ought so to have employed him. There are, of course, matters which do not fall under such general account, and yet are not law costs in the liquidation process. Such are the costs in an outside litigation in which the company in liquidation is involved. An example is No. 2 of above list of accounts, No. 47 of process, being costs in action *Menzies & Company Limited* v. *The Company in Liquidation*. Such accounts are properly stated separately.

"In the present case the agent has lodged a separate account for general agency. It is (7) No. 54 of process—

"27th December 1906, 29th February 1908, extrajudicially taxed at . . £87 2 1

"It is this account which I must ask the reporter particularly to examine. For this purpose it may be accepted that if the work was done and legitimately done by the agent, the charges as extrajudicially taxed by the Auditor are according to scale or otherwise proper. But I do not think that it falls within the function of the Auditor to examine into the question whether the work was legitimately done by the agent, and was not work which should have been done and probably was done by the liquidator. Nor do I think that the Auditor can be expected to have that familiarity with the technical business of liquidations or the time at his disposal to enable him to do so. This comes more properly within the functions of the reporter on the liquidator's accounts. A perusal of the account in question leaves me with the impression that there are items in it which require examination and the explanations of the liquidator and his agent. To give but a few examples. I have difficulty in seeing what the agent had to do with revising list of contributories, with getting valuation of the s.s. 'Matje,' with inspection of boilers, &c. There may or may not be anything of serious moment to except to. I can only say that where, in a liquidation such as this, a general law agency account for £87 is claimed, in addition to £120 of proper process charges, being over 40 per cent. of the whole law charges, and being not substantially less than the whole fee allowed to the liquidator, I should not be satisfied that I had done my duty in the supervision of the liquidation if I did not ask the opinion of the reporter, not upon the scale of the charges, but upon their propriety as charges in the liquidation. I am the more induced to take this course by a perusal of the correspondence between the liquidator and his agent, to which the reporter has already drawn my attention. . . .

"I have been asked by counsel watching this matter for the agent in the liquidation to grant him leave to reclaim. He has, I think, such interest in the matter as justifies the motion, and as matters touching the practice in liquidation to an important degree are involved, I should personally welcome their being submitted to the Inner House. I have accordingly granted his request."

Mr Reekie, the law agent in the liquidation, having reclaimed, the Court on 26th February 1909 varied the Lord Ordinary's interlocutor by making the remit one before answer by the law agent, and remitted the cause to his Lordship with instructions to report it to the Division on receiving Mr Robertson Durham's report.

Mr Robertson Durham having died, Mr John Stuart Gowans, C.A., Edinburgh, was on 22nd February 1910 appointed to report in his stead, and thereafter on 16th June 1910 the Lord Ordinary (CULLEN) reported the cause, along with Mr Gowans' report, to the First Division.

In his report Mr Gowans, *inter alia*, suggested that certain duplicate charges amounting to 16s. 9d., and certain prospective charges amounting to £17, 12s., should be disallowed. The law agent lodged answers, in which he denied that his accounts contained duplicate entries or charges for work that had not been done or that would never be done.

The case was further heard on 14th March 1911, when counsel for the reclaimer stated that he (the reclaimer) had lodged a new account (No. 67 of process), showing the work actually done, from which it would appear that a large number of the prospective charges to which the reporter objected were proper entries, and that accordingly he was entitled to payment of his account in full.

At advising, the opinion of the Court (the LORD PRESIDENT, LORD JOHNSTON, and LORD MACKENZIE) was delivered by

LORD JOHNSTON—This liquidation commenced, so far as the Court is concerned, on 9th January 1907, when an application

for a supervision order was presented. By March 1908 the liquidation had reached the point of the liquidator being in a position to present his final note for approval of his accounts, adjustment of his remuneration, final distribution of the balance in his hands, and dissolution of the company. On 19th June 1908, as Lord Ordinary in the liquidation, I remitted to the late Mr Robertson Durham, C.A., to report on the liquidator's accounts and recommend his fee.

A good deal of trouble and corresponding expense was caused by the way in which the liquidator's law agent, Mr Reekie, had stated his law charges and obtained their audit, and Mr Robertson Durham drew my attention to the accounts for law business in the liquidation, which he considered to be excessive. I understood that as meaning markedly out of proportion not only to the quality and extent of the business of the company in liquidation, but to the fee allowed to and accepted, without demur, by the liquidator, and by no means as meaning, not in accordance with the law agents' scale of charges. Mr Robertson Durham having reported to me, after considering his report, and having regard to certain matters which I need not now enter into, I thought it proper to renew the remit to Mr Robertson Durham, with instructions to examine the accounts of Mr Reekie, and to obtain such further information and explanation as he might think proper. A note was appended to the interlocutor renewing the remit, in which I expressed my views in relation to certain general matters in liquidation process which the circumstances of this case brought into prominence. At the request of Mr Reekie, the law agent in the liquidation, in respect of his interest, leave was granted to him to compear and to reclaim. This he did on 14th January 1909. I did not know what his grounds of, or purpose in, reclaiming were. But as he had asked leave to do so, I stated at the end of my opinion of 8th January 1909, in granting leave, that I should personally welcome the submission to the Inner House of the important matters of practice, on which I had just expressed my views. Mr Reekie's reclaiming note came before this Court, and the result has been a very careful review of the proceedings in this liquidation, not only on general considerations, but as they affect the position of Mr Reekie personally.

I shall deal first with the general questions raised, which are of considerable importance to the proper conduct of liquidations. There appears to have been (and I speak from experience in other cases), until the matter was made prominent by this reclaiming note, an impression in the minds of a large number of agents acting for liquidators that there was a distinction in the matter of their accounts between judicial and extrajudicial work. I understand that it is in accordance with the views of your Lordships that no such distinction can be entertained. If a liquidation is judicial from its commencement, or is once placed under the supervision of the Court, the whole liquidation is judicial; the Court supervise the whole actings of the liquidator and his whole conduct of the liquidation. It is true that the liquidator can do a great deal, and indeed ought to do a great deal, without coming to the Court. But that does not relieve him from the supervision of the Court. How his whole conduct of the liquidation comes under the supervision of the Court is in this wise. He cannot draw his remuneration without having it fixed by the Court. He cannot get it fixed by the Court without having his account of intromission examined and approved by the Court in the accustomed mode. And examination of his accounts, with a view to approval, involves consideration of his whole conduct of the liquidation. The supervision therefore of the Court is not limited to dealing with special applications to the Court in the course of the liquidation. All accounts brought in by the liquidator, and, *inter alia*, the account of his law agent, and every part of that account, are as much under judicial cognisance as any other. Accordingly Mr Reekie was wrong in dividing his account for law business into an account for judicial and an account for extra-judicial work. But he made a consequent error of more moment in applying for a judicial remit to the Auditor of Court to audit his so-called judicial account, and in assuming that he and the liquidator had nothing to do but to sign a docquet making a private remit for audit of the so-called extra-judicial account. They might just as well have passed over the Auditor of Court and selected their own auditor. The fact is that the whole law accounts are included in the remit made by the Lord Ordinary to the Auditor to audit the accounts of the agent in the liquidation, preceding or concurrent with his remit to a man of business to audit the liquidator's account of intromissions and to suggest his fee. The reporter last mentioned must know what has been done by the law agent before he can consider, with a view to recommending for remuneration, the work of the liquidator, and that he cannot know until he has seen the accounts for law business after audit.

But while the accounts are all judicial, it is matter of convenience to have them divided, not as was done here into five or six groups, each applicable to a step in the liquidation process, but into two accounts —first, an account for proper Court business, and second, an account for general business. The first account should include all Court business and should not be broken up. It should treat the liquidation process, as it is in fact, as one process. The result is to let the Auditor and the man of business have a comprehensive view of the course of the liquidation as a judicial process. And I think it may well have another result, namely, to show that a considerable reduction in the amount of judicial process is possible without detriment to the liquidation and in the interest of the creditors. I think expense could often be saved by

liquidators requesting the Lord Ordinary to grant them an interview to arrange matters incidental to the liquidation without presenting formal notes. The second account has in my opinion a still more beneficial result, because it gives to those concerned—the Auditor, the reporter, and the Court in turn—a full history of the liquidator's references to his law agent in chronological order. Those two accounts are both included in the remit by the Lord Ordinary, and the audit of both must be regarded as judicial.

That is the main general question of importance raised by this liquidation. But before leaving it I must again refer to a matter with which I dealt with as Lord Ordinary, viz., the tendency in all liquidations, and particularly in those of the smaller class of company, on the part of liquidators to call in their law agents on occasions in which they are perfectly capable of walking without their assistance and ought to do so. The difference between the duties of the law agent and the liquidator was stated in the note to my interlocutor of 8th January 1909 thus—"It is his" (the liquidator's) "duty to perform the business of the liquidation himself, and only to employ the law agent in such matters as bring him into contact with the Court, in such matters as involve conveyancing, and in such other matters as justify him in obtaining legal advice for his guidance. The law agent properly comes on the scene only when his client the liquidator requires his assistance and to that end instructs him," *i.e.*, specially employs him. And to that statement I have nothing to add.

Regarding Mr Reekie's reclaiming note from the point of view of his own personal interest in it, it is difficult to see what he objected to in the remit of January 1909 to Mr Robertson Durham, for his objections have been all directed to the result of the remit and not to the remit itself. The lamented death of Mr Robertson Durham delayed matters, but the remit was transferred to his partner Mr Gowans and he has reported. It is to that report that Mr Reekie has taken his objections, and his objections have been considered, but none of them are well founded.

The only one which I think it necessary to notice in detail is that regarding prospective charges in Mr Reekie's account—charges prospectively necessary to carry the liquidation to a conclusion. I think there can be no doubt that certain prospective charges must be stated, and I do not think it possible always to say whether all the prospective charges made will actually be incurred or not. Some prospective charges will in fact be incurred; others will not. But it is difficult to estimate beforehand which will be incurred and which not. The Auditor may be relied on to see that no charges are prospectively allowed which are not reasonably necessary in the particular liquidation. But in the case before the Court, in consequence of the delay that has occurred, a great many prospective charges have become real charges and a great many additional charges have been incurred. Accordingly I am of opinion that Mr Reekie is entitled to his further account as taxed, and as taxed on the footing that allowance must be made for prospective charges already passed by the Auditor. There will be a considerable balance due to Mr Reekie on the audit of such further account, and to that extent he ought to have his further expenses. For the rest, as regards his expenses as compearer, I cannot see that Mr Reekie has made anything of his reclaiming note, and those expenses should not be allowed.

Accordingly I should propose to your Lordships to approve Mr Gowans' report and to give effect to the recommendations he makes, allowing Mr Reekie his further account of expenses as agent in the liquidation as taxed, but no expenses as a compearing party.

LORD PRESIDENT—That is the judgment of the Court. I need only say that though we have now laid down a very necessary rule for the conduct of liquidations—and the procedure in this case has not been in accordance with that rule—yet it is only just to Mr Reekie to say that he seems to have followed what has been the practice up to this date, and therefore, though in one sense he was wrong, in another sense he was not.

LORD KINNEAR was absent.

The Court repelled the objections, approved of Mr Gowans' report, and directed "(1) that the conclusions the reporter comes to in said report be given effect to in the adjustment of accounts, and particularly that in terms thereof the liquidator be authorised to take credit to himself in his account for a further fee of ten guineas; (2) that Mr Reekie be entitled to get payment of his business account, No. 67 of process, as the same may be taxed; (3) that Mr Reekie be not entitled to get payment of his business account alleged to have been incurred by him as a compearing party, and remits to the Lord Ordinary to see the account No. 67 of process taxed, to adjust the liquidator's final accounts, and dispose of any balance of his intromissions."

Counsel for the Reclaimer — Morton. Agent—Party.

Counsel for the Liquidator (Respondent) — Ingram. Agent — J. Ferguson Reekie, Solicitor.